

SENATE No. 1614

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Díaz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act requiring just cause for eviction and foreclosed properties.

PETITION OF:

NAME:

Sonia Chang-Díaz

DISTRICT/ADDRESS:

Second Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. S02664 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REQUIRING JUST CAUSE FOR EVICTION AND FORECLOSED PROPERTIES.

1 *Whereas*, The deferred operation of this act would tend to defeat its purpose, which is
2 forthwith to protect citizens of the Commonwealth involved in the mortgage foreclosure crisis,
3 therefore it is hereby declared to be an emergency law, necessary for the immediate preservation
4 of the public convenience.

5 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by*
6 *the authority of the same, as follows:*

7 **SECTION 1.** As used in this Act, the following words shall, unless the context clearly requires
8 otherwise, have the following meanings:

9
10 'Entity', a business organization, or any other kind of organization, including without limitation, a
11 corporation, partnership, trust, limited liability corporation, limited liability partnership, joint
12 venture, sole proprietorship, or any other category of organization, and any employee, agent,
13 servant or other representative of such entity.

14
15 'Eviction', any action, without limitation, by a foreclosing owner of a housing accommodation
16 which is intended to compel a tenant or occupant to vacate or to be constructively evicted from
17 such housing accommodation.

18
19 "Foreclosing owner", an entity that both (1) held or owned a mortgage or other security interest in
20 the housing accommodation at any point prior to the foreclosure of the housing accommodation
21 or is the subsidiary, parent, or agent of, or otherwise is related to any entity which held or owned
22 the mortgage or other security interest in the housing accommodation at any time prior to the
23 foreclosure of the housing accommodation; and (2) holds title to this housing accommodation
24 that it acquired at a foreclosure sale or by any other method of foreclosure.

25
26 For purpose of this definition, the phrase 'holds title' shall include an entity which holds title in
27 any capacity, directly or indirectly, without limitation, whether in its own name, as trustee, or as
28 beneficiary. Any entity which attempts to evict tenants from the housing accommodation,

whether in its own name, as trustee, as mortgage servicer, or as beneficiary, or in any other role, without limitation, shall be considered to 'hold title' for the purpose of this definition.

Any institutional mortgagee that holds title to a housing accommodation that has been foreclosed upon within the last three years shall be considered to be a foreclosing owner for the purpose of this Act.

'Foreclosure', a legal proceeding to terminate a mortgagor's interest in property, instituted by the mortgagee, either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property, including, without limitation, foreclosure by action, by bill in equity, by entry and continuation of possession for three years, and by sale under the power of sale in a mortgage as described in Chapter 244 of the General Laws.

'Foreclosure sale', the foreclosure of a mortgage by sale of a housing accommodation pursuant to a power of sale in a mortgage deed, as described in Section 14 of Chapter 244 of the General Laws.

'Housing accommodation', any building or buildings, structure or structures, or part thereof or land appurtenant thereto, or any other real or personal property used, rented or offered for rent for living or dwelling purposes, together with all services connected with the use or occupancy of such property.

'Institutional mortgagee', any entity that holds or owns mortgages or other security interest in three or more properties in the Commonwealth, or acts as a mortgage servicer of three or more mortgages of properties in the Commonwealth, or is the subsidiary, parent, or agent of, or otherwise related to any entity which holds or owns mortgages or other security interests in three or more properties in the Commonwealth or acts as a mortgage servicer of three or more mortgages of properties in the Commonwealth

'Just Cause', shall be at least one of the following: (a) the tenant or occupant has failed to pay the rent in effect prior to the foreclosure or failed to pay use and occupancy charges, but only if the foreclosing owner notified the tenant or occupant in writing of the amount of rent or use and occupancy that was to be paid and to whom it was to be paid; (b) the tenant or occupant has violated an obligation or covenant of the tenancy or occupancy other than the obligation to surrender possession upon proper notice and has failed to cure such violation within a reasonable time after having received written notice thereof from the foreclosing owner; (c) the tenant or occupant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the unit, or is creating a substantial interference with the quiet enjoyment of other occupants; (d) the tenant or occupant is convicted of using or permitting the unit to be used for any illegal purpose; (e) the tenant or occupant who had a written lease or other rental agreement which terminated on or after this Act has taken effect, has refused, after written request or demand by the foreclosing owner to execute a written extension or renewal thereof for a further term of like duration and in such terms that are not inconsistent with or violative of any provisions of this Act; (f) the tenant or occupant has refused the foreclosing owner reasonable access to the unit for the purpose of making necessary repairs or improvement required by the laws of the United

73 States, the Commonwealth or any subdivision thereof, or for the purpose of inspection as
74 permitted or required by agreement or by law or for the purpose of showing the rental housing
75 unit to a prospective purchaser or mortgagee;

76
77 'Mortgagee', an entity to whom property is mortgaged; the mortgage creditor, or lender,
78 including, but not limited to, mortgage servicers, lenders in a mortgage agreement and any agent,
79 servant, or employee of the mortgagee, or any successor in interest and/or assignee of the
80 mortgagee's rights, interests or obligations under the mortgage agreement.

81
82 'Mortgage Servicer', an entity which administers or at any point administered the mortgage,
83 including, but not limited to, calculating [principal](#) and interest, collecting payments from the
84 [mortgagor](#), acting as an [escrow](#) agent, and [foreclosing](#) in the event of a [default](#).

85 'Post-foreclosure eviction', an eviction of a tenant by a foreclosing owner.

86
87 'Tenant or occupant', any person or group of persons entitled to occupy a housing
88 accommodation pursuant to a written lease, tenancy at will, tenancy at sufferance or otherwise.

89 'Unit' or 'residential unit', the room or group of rooms within a housing accommodation which is
90 used or intended for use as a residence by one household.

91
92 **SECTION 2.** Notwithstanding any other special or general law to the contrary, the foreclosing
93 owner shall not evict a tenant or occupant except for just cause.

94
95 **SECTION 3.** Any foreclosing owner that evicts tenants or occupants in violation of any
96 provisions of this Act, or any ordinance or by-law adopted pursuant to this Act, shall be punished
97 by a fine of not less than ten thousand dollars. Each eviction done in violation of this Act
98 constitutes a separate offense.

99 The district and superior courts, and the housing courts in the Commonwealth, shall have
100 jurisdiction over an action arising from any violation of this Act, or any ordinance, or by-law
101 adopted pursuant to this Act, and shall have jurisdiction in equity to restrain any such
102 violation. No tenant shall be evicted in violation of any provision of this Act, or any ordinance
103 or by-law adopted pursuant to this act. It shall be a defense to eviction that the foreclosing
104 owner attempted to evict tenants in violation of any provision of this Act, or any ordinance or by-
105 law adopted pursuant to this Act.

106 **SECTION 4.** This Act shall cease to have effect on December 31, 2013.

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